

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Petition of Dalia Genger, as  
Trustee of the Orly Genger 1993 Trust, Created by  
Trust Agreement Dated December 13, 1993 between  
ARIE GENDER, as Grantor, and LAWRENCE M.  
SMALL and SASH A. SPENCER, as Trustees, to  
Turnover Property to the Orly Genger 1993 Trust.

File No.: 2008-0017/E

Surrogate Nora S. Anderson

Dalia Genger, Trustee of the Orly Genger 1993 Trust,

Petitioner,

-against-

Orly Genger, et al.,

Respondents.

**AFFIRMATION OF LEON FRIEDMAN IN SUPPORT OF MOTION TO DISMISS  
BY RESPONDENT ARIE GENDER**

LEON FRIEDMAN, an attorney duly admitted to practice in the courts of the state of  
New York, affirms the following under penalties of perjury:

1. I am the attorney for respondent Arie Genger. I make this affirmation in support  
of a motion to dismiss the "Amended Petition" brought by Petitioner Dalia Genger.

2. Previously, Dalia had attempted to serve various parties with copies of a  
purportedly new action in December, 2017. Orly Genger, Arie Genger and other respondents  
then filed various motion to dismiss on February 4, and 5, 2018. Those motions are still pending  
before this court.

3. Thereafter, Dalia's attorney, Judith Bachman, sent by mail a new "Amended  
Petition" to me, as Arie Genger's attorney, on April 18, 2018. She apparently believes that such a

mailing to an attorney constitutes service of the petition upon my client. I immediately informed her that I was not accepting service of the papers on behalf of Mr. Arie Genger.

4. As noted in our previous motion to dismiss, the only papers actually served on *Arie Genger* (as opposed to his lawyers) was a two page document entitled “Miscellaneous Citation.” dated December 21, 2017. (Attached as Exhibit A.) That document was sent to a former address of Arie Genger in Florida. It was then forwarded to the new address and Mr. Genger obtained it at a post office on January 22, 2018. (See Exhibit B). No petition actually accompanied the two page document.

5. As noted above, we had previously submitted a motion to dismiss to this Court on February 4, 2018, noting that Mr. Arie Genger had not been served with the petition or any amended petition. (Affirmation of Leon Friedman In Support of Motion To Dismiss by Respondent Arie Genger, dated February 4, 2018, par. 2).

6. In the previous motion to dismiss served by Orly Genger, she asserted:

She [Dalia] attempted to serve that document [the citation] on certain of the named respondents, including Arie Genger, Orly’s father and the former husband of Dalia. But she never attempted service of the underlying documents – including the petition itself in this New Action or any of its numerous exhibits – on any respondent.

See Memorandum of Law in Support of Respondent Orly Genger’s Motion to Dismiss Dalia Genger’s 2016 Petition, dated February 5, 2018, at p. 7,

7. *Nowhere in Dalia’s answering papers to the original motion did she challenge the assertions noted above that the underlying petition, as opposed to the two page citation, were properly served on Arie Genger.* On that basis and on the basis of the legal memorandum submitted by Orly Genger on her motion, the “Amended Petition” must be dismissed.

8. In every other respect, Arie Genger is in precisely the same position as his daughter Orly Genger, as described in her moving papers in this action. Arie Genger hereby

incorporates and adopts all of the arguments made by Orly Genger in her filing before this Court in this matter.

9. For the reasons stated above, Respondent Arie Genger moves that the pending “Amended Petition” be dismissed.

Affirmed under penalties of perjury.

Dated: New York, N.Y.  
May 4,, 2018

  
Leon Friedman  
685 Third Ave, 25<sup>th</sup> floor  
New York, N.Y. 10017  
(646) 825-4398

## **EXHIBIT A**

Miscellaneous Citation

File No.

2008-0017 / E

**SURROGATE'S COURT NEW YORK COUNTY**

*Citation*

THE PEOPLE OF THE STATE OF NEW YORK

TO:

ORLY GINGER,

ARIE GINGER,

GLENCLOVA INVESTMENT COMPANY,

TR INVESTORS, LLC,

NEW TR EQUITY I, LLC,

NEW TR EQUITY II, LLC,

TRANS-RESOURCES, INC.,

ARNOLD BROSER,

DAVID BROSER,

SAGI GINGER 1993 TRUST

A petition having been filed by Dalia Genger, who is domiciled at 200 E. 65<sup>th</sup> Street, in the City of New York, County of New York and State of New York.

YOU ARE HEREBY CITED TO SHOW CAUSE before the Surrogate's Court, New York County, at 31 Chamber Street, Room 509, New York, New York on

February 6, 2018 at 10 o'clock in the forenoon of that day, why a decree should not be ~~made in the matter of the Application of Dalia Genger as trustee of the Orly Genger 1993 Trust~~ Concerning the Orly Genger 1993 Trust created by Trust Agreement, dated December 13, 1993 between Arie Genger, as Grantor and Lawrence M. Small and Seth A. Spence as Trustees, granting the following relief as requested in the petition:

- a. damages in in the amount of \$32.3 million, plus statutory interest;
- b. imposition of a constructive trust on the Settlement Proceeds;
- c. an order directing the delivery of the Settlement Proceeds to her as Trustee;
- d. an accounting of the Settlement Proceeds, and

e. such other relief as to the Court seems just and necessary.

Dated, Attested and Sealed.

December 21, 2017

Hon. Nora S. Anderson, Surrogate

Diana Sanabria Chief Clerk

JUDITH BACHMAN, ESQ  
254 S. Main Street, Suite 306  
New City, New York 10956  
(845) 639-3210  
jlbesq\_99@yahoo.com  
*Attorneys for Petitioner Dalia Genger*

[Note: This citation is served upon you as required by law. You are not required to appear. If you fail to appear it will be assumed you do not object to the relief requested. You have a right to have an attorney appear for you.]

**PROOF OF SERVICE MUST BE FILED  
TWO DAYS PRIOR TO THE RETURN DATE**  
Court Rule 207.7 (c)

## **EXHIBIT B**

JUDITH LISA BACHMAN, ESQ  
254 SOUTH MAIN STREET, STE. 406  
NEW CITY, NY 10956

ARIE GINGER  
17001 COLLINS AVENUE  
SUNNY ISI

PERSONAL AND CONFIDENTIAL

OK



CERTIFICATE OF SERVICE

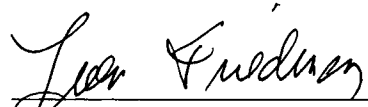
I hereby certify that I am not a party to this action, am over 18 years of age and reside at 148 East 78th Street, New York, N.Y and that I am an attorney duly admitted to the Courts of the State of New York.

On May 4, 2018, I served a copy of the annexed Notice of Motion to Dismiss with accompanying affirmation of Leon Friedman in the following manner:

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Judith Bachman  
254 S. Main Street, Suite 406  
New City, N.Y. 10956

Dated: May 4, 2018

  
\_\_\_\_\_  
Leon Friedman

Check Applicable Box

☐ Attorney's  
Certification

certify that the annexed  
has been compared by me with the original and found to be a true and complete copy thereof.

☐ Attorney's  
Verification  
by  
Affirmation

say that: I am the attorney of record, or of counsel with the attorney(s) of record, for  
. I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information  
and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon  
knowledge, is based upon the following.

The reason I make this affirmation instead of \_\_\_\_\_ is \_\_\_\_\_

I affirm that the foregoing statements are true under penalties of perjury.

Dated: \_\_\_\_\_

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF \_\_\_\_\_

ss:

being sworn says: I am \_\_\_\_\_

Check Applicable Box

☐ Individual  
Verification

in the action herein; I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on  
information and belief, and as to those matters I believe them to be true.  
the \_\_\_\_\_ of \_\_\_\_\_

☐ Corporate  
Verification

a corporation, one of the parties to the action; I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on  
information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following: \_\_\_\_\_

Sworn to before me on \_\_\_\_\_, 20 \_\_\_\_\_

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF \_\_\_\_\_

ss:

being sworn says: I am not a party to the action, am over 18 years of \_\_\_\_\_

age and reside at \_\_\_\_\_

On \_\_\_\_\_, 20 \_\_\_\_\_, I served a true copy of the annexed  
in the following manner:

☐ Service  
by Mail

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service,  
addressed to the address of the addressee(s) indicated below, which has been designated for service by the addressee(s) or, if no such address  
has been designated, is the last-known address of the addressee(s):

☐ Personal  
Service

by delivering the same personally to the persons at the address indicated below:

Check Applicable Box

☐ Service by  
Facsimile

by transmitting the same to the attorney by facsimile transmission to the facsimile telephone number designated by the attorney for that  
purpose. In doing so, I received a signal from the equipment of the attorney served indicating that the transmission was received,  
and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the  
U.S. Postal Service, addressed to the address of the addressee(s) as indicated below, which has been designated for service by the  
addressee(s) or, if no such address has been designated, is the last-known address of the addressee(s):

☐ Service by  
Electronic  
Means

by transmitting the same to the attorney by electronic means upon the party's written consent. In doing so, I indicated in the subject matter  
heading that the matter being transmitted electronically is related to a court proceeding:

☐ Overnight  
Delivery  
Service

by depositing the same with an overnight delivery service in a wrapper properly addressed, the address having been designated by the  
addressee(s) for that purpose or, if none is designated, to the last-known address of addressee(s). Said delivery was made prior to the latest  
time designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below:

Sworn to before me on \_\_\_\_\_, 20 \_\_\_\_\_

(Print signer's name below signature)

*Year 20*

**SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**In the Matter of the Petition of Dalia Genger, as Trustee of the Orly Genger 1993 Trust, to Turnover Property to the Orly Genger 1992 Trust**

**Dalia Genger, Trustee of the Orly Genger 1993 Trust  
Petitioner**

**-against-**

Orly Genger, et al

## Respondents

**NOTICE OF MOTION TO DISMISS WITH  
AFFIRMATION OF LEON FRIEDMAN**

**LEON FRIEDMAN**

*Attorney for*      **Respondent Arie Genger**

685 THIRD AVENUE, 25TH FLOOR  
NEW YORK, NEW YORK 10017  
(646) 825-4398

*Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.*

*Dated:* ..... *Signature* .....

Print Signer's Name.....

*Service of a copy of the within* *is hereby admitted.*

*Dated:*

Attorney(s) for

**PLEASE TAKE NOTICE**

Check Applicable Box

  
NOTICE OF  
ENTRY

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within-named Court on

20

☐ NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the  
Hon. \_\_\_\_\_, one of the judges of the within-named Court,  
at \_\_\_\_\_  
on \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ M.

*Dated:*

**LEON FRIEDMAN**

*Attorney for*

*To:*

685 THIRD AVENUE, 25TH FLOOR  
NEW YORK, NEW YORK 10017  
(646) 825-4398

Attorney(s) for